THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

On Friday, the third day of March,

two thousand and six.

W.P.No.8968 of 1996

Wildon India Limited, 6-3-652, “Kautilya” 1st Floor, Amrutha Estates, Somajiguda, Hyderabad-500 482, represented by its President Sri P.Narendra Prasad.

…….Petitioner.

And:

The Executive Officer, Isnapur Gram Panchayat, Medak District and others.

……..Respondents.

O R D E R:

The case of the Petitioner, a company incorporated under the provisions of the Companies Act, 1956, is that it purchased Ac.9.29 guntas in S.Nos. 194 and 195 of Isnapur village and constructed buildings after obtaining permission from the Isnapur Gram Panchayat and that by the notice dated 19.8.1995, the Executive Officer of the Isnapur Gram Panchayat (1st respondent) demanded it to remove its fencing and give 15 feet wide site to enable the owners of the land in S.No.193 to

pass through the site belonging to it, by citing a resolution said to have been passed by the Gram Panchayat accepting its alleged proposal to leave 15 feet wide space in its land, and so it had, by the letter dated 12.10.1995, requested the Gram Panchayat to send a copy of the resolution dated 18.7.1986 along with the copy of the letter of consent allegedly given by it, offering to provide 15 feet wide road for the use of the owners of land in S.No.193, and that respondents 1 and 2 without complying with the said request sent another notice dated 15.12.1995 to show cause why its fencing should not be removed, and that enquiries made by it revealed that the owners of land in S.No.193, with a view to develop it as a real estate, brought pressure on the Panchayat to take its site of 15 feet width for their use to reach the land in S.No.193, as additional access to that land from the main road, though there already is a way to reach the land in S.No.193, and so it is filing this petition for quashing of the notices dated 19.8.1995 and 23.3.1996, said to have been issued in pursuance of the resolution dated 18.7.1986 of the Panchayat.

2) The case of respondents 1 and 2, as disclosed from the counter affidavit of the 1st respondent, is that the Gram Panchayat while resolving to direct the petitioner to leave 15 feet site on the northern side of its site, granted permission to it to make the constructions, vide resolution No.4 dated 18.7.1986, but the petitioner without leaving the site constructed fencing all around the factory, and later constructed a compound and so some of the residents of Isnapur village gave a complaint that the petitioner, which agreed to leave 15 feet width strip as a path way at the time of construction of the factory, did not fulfil its promise and so he issued the notice dated 19.8.1995 to the petitioner directing it to remove the fencing, constructed against the resolution of the Gram Panchayat and the undertaking given by it to leave 15 feet wide site for laying a road. So petitioner cannot question the notice issued to it. Otherwise also in view of Rule 3 of A.P. Gram Panchayat Building Rules 1972 (building Rules) framed under the A.P. Gram Panchayat Act, 1964, petitioner has an obligation to lay a road. Therefore, by the notice dated 15.12.1995 petitioner was directed to remove the fencing constructed in violation of the Building Rules. Inasmuch as petitioner was granted permission to construct subject to the condition of its leaving 15 feet site and since it made the construction in violation of Rule 3 of Building Rules, petitioner is not entitled to any relief.

3) No counter affidavit is filed on behalf of the third respondent.

4) The contention of the learned counsel for the petitioner is that since petitioner never consented to, nor offered to leave 15 feet wide strip of its land, for being used as a road across its site by the residents of the village and since Rule 3 of Building Rules, relied on by respondents 1 and 2, does not apply to the site belonging to the petitioner, as its site is adjacent to the public road and as it did not seek permission to sell its land by converting it as plots, and since respondents 1 and 2 acting at the behest of the owners of the land behind the land of the petitioner; who intend to sell their land by making it into plots by connecting them to the main road through the land of the petitioner, as an additional approach road to their land, have issued the notices impugned and since petitioner cannot be deprived of its land without taking recourse to due process of law in view of Art.300-A of the Constitution, action of respondents 1 and 2 in directing the petitioner to leave 15 feet wide in its site as a path way across its property to enable the owners of the land behind the property of the petitioner to have an additional path way to their land, is unconstitutional.

5) The contention of the learned standing counsel for respondents 1 and 2 is that since the Gram Panchayat resolved to grant permission to construct to the petitioner subject to its leaving 15 feet site for the purpose of road, in accordance with Rule 3 of the Building Rules, and since petitioner made the construction in violation of the resolution of the gram panchayat, respondents 1 and 2 have the power and authority to direct the petitioner to comply with its undertaking of leaving 15 feet wide strip in its land as road.

6) On my direction, respondents 1 and 2 i.e. Executive Officer and Sarpanch of the Isnapur Gram Panchayat produced the resolution book containing the resolution book dated 18.7.1986 after taking several adjournments. The Minutes Book of the Panchayat, produced by the respondents 1 and 2, is not paginated. It shows that in the meeting that was held on 18.7.1986 there were seven agenda items, in which the item relating granting permission to the petitioner is listed as item No.7. The resolution passed on item No.7 is found written on two pages and are found loose i.e. they are not stitched or attached to the book. The resolution written in the first page reads:

the remaining portion of the resolution written on the next page pasted reads:

The necessity of pasting pages in the Minutes book and why the page has come out of the book and found loose is not explained.

7) Be that as it may, the plans submitted by the petitioner to the Gram Panchayat, seeking permission to make constructions, show that they were approved as it is without directing any modification thereto. No document is produced by respondents 1 and 2 to show that above extracted resolution in item No.7 of the agenda was communicated to the petitioner. Respondents 1 and 2 did not produce any document to show that petitioner agreed to leave 15 feet site for laying a road in its site. Having approved the plans submitted by the petitioner without any modification, when in fact the petitioner did not make any proposal to leave 15 feet site in its land for laying a road, merely on the basis of a resolution passed without putting the petitioner on notice and even without communicating a copy of the resolution passed by it to the petitioner, respondents 1 and 2 have no right to insist on the petitioner handing over 15 feet wide strip from its land for laying a road. By mere passing of a resolution *suo motu*, and without taking recourse to the provisions of Land Acquisition Act and paying compensation to the owner, a gram panchayat cannot acquire title to the land of any of the citizens having land in its jurisdiction.

8) Rule 3 of the Building Rules, relied on by the learned standing counsel for respondents 1 and 2, reads:

> "3. Owners obligation to make a lay out and to form a street or road when disposing of lands as building sites:- (1) The owner of any land shall, before he utilizes, sells, leases, or otherwise disposes of such land or any portion thereof, as sites for construction of buildings.

a) make a layout and form a street or road giving access to sites and connecting them with an existing public or private street except in cases where the sites abut on an existing public or private street;

b) Set apart in the layout, at least 5 per cent of the total area of land for a play ground, a park, an educational institution or for any other public purpose as may be prescribed by the Gram Panchayat;

c) shall give notice to the Gram Panchayat concerned in the application form appended in Appendix K.

(2) Unless the conditions specified in clauses (a) and (b) of sub-rule (1) are satisfied the owner shall not be entitled to utilize, sell, lease or other-wise dispose of his land or any portion thereof for the construction of buildings.

(3) No permission for the construction of buildings in such land or portion thereof shall be granted by theGram Panchayat, unless—

(i)the street or road as required in sub-rule (1) is laid out and the condition required in sub-rule (2) thereof is fulfilled; and

(ii) all layouts indicating sub-divisions of land, however shall they are, are approved by the Gram Panchayat"

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The fact that the site of the petitioner is abutting the public road is not denied or disputed. When the petitioner sought permission to construct buildings in its own site, which is adjacent to a public road, and is using its entire site for itself, question of its seeking permission for a layout showing sites for formation of internal road does not arise. Therefore, the contention of respondents 1 and 2 that by virtue of Rule 3 of the Rules petitioner has to leave a strip of 15 feet, for formation of a road cannot be countenanced.

9) As rightly contended by the learned counsel for the petitioner unless respondents 1 and 2 take steps to acquire the land belonging to the petitioner they cannot insist upon the petitioner leaving a site for formation of a public road, merely on the basis of a resolution said to have been passed by it, more so because there is nothing on record to show that petitioner gave consent to leave 15 feet wide strip in its site for laying a road as contended by respondents 1 and 2, and since plans submitted by the petitioner, while seeking permission to construct the buildings were approved by the Gram Panchayat without any modification. If the Gram Panchayat thought that petitioner cannot be granted permission to continue without its leaving a

strip of 15 feet in its site for formation of a road it should have returned the plans submitted, without approving those plans and directing it to submit revised plans showing the proposed road.

10) When the building plans as submitted by the petitioner were approved, and when there is nothing on record to show that the petitioner agreed to leave any portion of the land belonging to it for laying a road for the benefit of others, the contention of respondents 1 and 2 that the petitioner, having agreed to leave a portion of its site for road formation did not fulfil that promise cannot be believed. Therefore, the notices impugned are liable to be and hence are quashed.

11) For the reasons stated above the writ petition is allowed with costs against respondents 1 and 2. Rule Nisi is made absolute. The impugned notices are quashed.

JUSTICE C.Y.SOMAYAJULU

3rd March 2006.

BCS